**S.B. CIVIL MISC. APPEAL NO.699/2006**
[ Shahajadi Bano & Ors. Vs. Mehboob Khan & Ors.]

DATED : 11.07.2006

**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

Mr.J. R. Choudhary for the appellants.

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By way of this appeal against the award dated 11.09.2003 made by the Motor Accidents Claims Tribunal, Didwana in Claim Case No.5/2001; the claimant-appellants seek enhancement over the compensation amount of Rs.2,08,000/- awarded by the Tribunal on account of accidental death of Rasool Khan aged 48 years, husband of the appellant No. 1, father of the appellants Nos. 2 to 5 and son of the appellant No. 6 .

On 27.02.2000 the deceased Rasool Khan while traveling in a jeep bearing registration No. RJ 21 C 1765 sustained injuries and expired on the spot when the running jeep capsized near Daulatpura.

The present appellants claimed compensation on account of death of Rasool Khan stating his age at 48 years, his being in employment with the Forest Department and his income at Rs.6,500/- per month.

The Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid jeep RJ 21 C 1765 and held the respondents liable for compensation. While taking up quantification of compensation, the Tribunal found that the income of the deceased was shown at Rs. 6,500/- per month but his wife admitted in her statements that she was receiving pension at Rs. 3,000/- per month and that her elder son has been accorded compassionate appointment in place of the deceased and was getting salary of Rs. 4,000/- per month. The Tribunal considered the component of advantage being received by the claimants and, therefore, took the loss of contribution at Rs. 12,000/- per annum and then deducting one-third for the personal expenditure of the deceased, took the multiplicand at Rs. 8,000/- per annum and applied a multiplier of 12 and thereby calculated pecuniary loss at Rs.96,000/-. The Tribunal proceeded to award Rs.2,000/- as funeral expenses and then allowed Rs.1,00,000/- as non-pecuniary compensation with Rs. 50,000/- towards loss of consortium to the wife and Rs. 10,000/- to each of the other claimants towards loss of love, affection and services. The Tribunal further awarded Rs. 10,000/- on so-called 'other heads' and has, therefore, made an award in the sum of Rs.2,08,000/- in favour of the claimants and allowed them

interest at the rate of 9% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has contended that looking to the age and income of the deceased and future prospects, the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel submitted that the Tribunal has not applied relevant principles for assessing pecuniary loss properly and has made unnecessary and uncalled for deductions from the salary income of the deceased while calculating pecuniary loss and has erred in awarding interest only at the rate of 9% per annum.

Having examined the impugned award, this court is of opinion that though the award remains haphazard in application of principles and even in arithmetical calculations, the ultimate amount awarded by the Tribunal cannot be said to be too low and, therefore, no interference is called for in this appeal.

The deceased was 48 years of age with a salary of Rs, 6,500/- per month and even if the employer has appointed the elder son of the deceased in his place, estimation of loss of dependency only at Rs. 8,000/- per annum is definitely on the lower side and ought to have been adopted at least double this figure at Rs. 16,000/- per annum. But then, in view of the

over all circumstances of the case, including the benefits received by the family and the age of the deceased, multiplier in this case would stand at 11 and not beyond. Pecuniary loss figure, thus, could be taken at Rs. 1,76,000/-. However, in the present case, whatever has been the inadequacy in the impugned award while assessing pecuniary loss, the same is effectively filled up when the Tribunal has awarded Rs. 50,000/- as loss of consortium to the wife and Rs. 10,000/- to each of other five claimants, leading to a non-pecuniary loss figure at Rs. 1,00,000/-. The Tribunal has been seriously in error in failing to considering that the amount awarded towards non-pecuniary loss is only that of general damages; and cannot be a substitute for pecuniary loss. It seems that the learned Tribunal, while having made utter miscalculation in pecuniary loss component, merely attempted to make up the corpus to a figure beyond Rs. 2,00,000/- and, therefore, not only awarded fanciful figures towards consortium and love and affection and service, yet further added another Rs. 10,000/- in the name of ‘other head’. Obviously, such amount towards non-pecuniary loss and so-called ‘other heads’ remains wholly unjustified. A reasonable amount of Rs. 10,000/- towards loss of consortium to the wife and Rs. 5,000/- for loss of love, affection and services to other claimants deserves to be allowed and Rs. 2,000/- towards funeral expenses could be

added. Therefore, adding Rs. 37,000/- to pecuniary loss figure of Rs. 1,76,000/- the award of just compensation in this case would have been about Rs. 2,13,000/-. As against this, the Tribunal has awarded Rs. 2,08,000/-. Therefore, the award, even if on the lower side, cannot be said to be too low or grossly inadequate so as to warrant interference in appeal. The Tribunal has awarded interest at the rate of 9% per annum and such rate of interest cannot be said to be on the lower side.

In ultimate analysis, this court is satisfied that the claimants have been allowed just compensation and there is no scope for significant upward revision in the award made in favour of the claimant-appellants.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

**[DINESH MAHESHWARI], J.**

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